

SCHLANGER LAW GROUP LLP

February 17, 2023

VIA ECF

Hon. Paul A. Engelmayer
U.S. District Judge
U.S. District Court - S.D.N.Y.
40 Foley Square
New York, NY 10007

Re: *Lojewski, et al. v. Group Solar USA, Inc., et al.*
Index: 1:22-cv-10816-PAE

Your Honor:

My firm is counsel to Plaintiffs in the above-referenced putative class action. We write to make several requests relating to Defendant Solar Mosaic LLC's two recent motions, *i.e.*, its motion to compel arbitration (ECF 16) and its combined motion to dismiss for failure to state and claim and strike class allegations (ECF 19). Pursuant to this Court's Order dated February 2, 2023, Plaintiffs' responses to the motions, or in the alternative any amendment of the Complaint, are due on February 22, 2023. ECF 23.

Specifically, Plaintiffs respectfully request as follows:

- a) The deadline to oppose the motion to compel arbitration and the deadline to amend the Complaint be extended by 30 days, to March 24, 2023. Defendant Solar Mosaic consents to this request.
- b) The Court hold in abeyance Defendant's motion to dismiss and motion to strike class allegations pending the outcome of the motion to compel arbitration (and, if ordered by the Court, an expedited trial regarding formation of any agreement to arbitrate. *Nieto v. 2249 Corp.*, 2018 U.S. Dist. LEXIS 53760, at *4, *11 (S.D.N.Y. Mar. 22, 2018) (S.D.N.Y. Mar. 22, 2018) (citing 9 U.S.C. § 4)). Defendant opposed this request and informed Plaintiff at the parties' meet and confer, held yesterday at 5 p.m. via Zoom, that Defendant's basis for objection was that any potential delay in a decision on its motion to dismiss and motion to strike was prejudicial.
- c) If the Court does not grant Plaintiffs' request for a stay of the briefing on the motion to dismiss and motion to strike class allegations, Plaintiffs request that the deadline for filing opposition be extended 30 days, to March 24, 2023. Defendant consents to this request.

The reason for Plaintiff's requested is the press of multiple other deadlines in federal matters as well as conflicting vacation and travel plans. This is a first request for extension. The request does create a conflict with regard to any other deadlines.

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The motion to stay briefing on the motion to dismiss/stay is warranted because consideration of the merits by the Court is premature at this juncture. *Shukla v. Viacom Inc.*, 2019 U.S. Dist. LEXIS 73680, at *24-25 (S.D.N.Y. May 1, 2019) (“[A]rbitrability is a ‘gateway’ issue and the court ‘should address the arbitrability of the plaintiff’s claim at the outset of the litigation.’ Therefore, after a motion to compel arbitration has been filed, a court must ‘refrain from further action’ until it determines arbitrability”) (case citations omitted).

We thank the Court for its consideration of the above requests.

Respectfully,

/s/Daniel A. Schlanger

Daniel A. Schlanger

cc: all counsel of record

The Court grants plaintiffs’ requests to file their opposition to the motion to compel arbitration, Dkt. 16, and their amended complaint or opposition to the motion to dismiss, Dkt. 19, by March 24, 2023. As the motion to compel arbitration concerns only a subset of plaintiffs, the Court declines plaintiffs’ request to stay briefing on the motion to dismiss.

Defendant Solar Mosaic LLC’s (“Mosaic”) reply, if any, to the motion to compel arbitration shall be filed by April 7, 2023. If plaintiffs amend their complaint, Mosaic shall, by April 14, 2023, (1) file an answer, (2) file a new motion to dismiss, or (3) submit a letter to the Court, copying plaintiffs, stating that they rely on the previously filed motion to dismiss.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

February 21, 2023